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TAGS: [PGOV](#) [KDEM](#) [IZ](#)
SUBJECT: DE-BA'ATHIFICATION: JUDICIAL PANEL OPTS FOR
POST-ELECTION VETTING

Classified By: Acting Deputy Chief of Mission Gary A. Grappo for reason
1.4 (b) and (d).

[¶1.](#) (C) SUMMARY: The seven-judge Cassation Chamber issued a conclusive legal opinion February 3 that orders IHEC to allow all candidates who have appealed their de-Ba'athification disqualifications to run in the upcoming elections. Supreme Court Judge Chief Medhat, who supervises the special panel, told A/DCM the evening of February 3 that the opinion covers all 210-odd candidates who filed appeals with the Cassation Chamber, but does not cover candidates who did not appeal or who withdrew their appeals. A copy of the opinion was submitted to IHEC for each disqualified candidate, with that candidate's name listed in the opinion, said Medhat. He also confirmed that Saleh al-Mutlaq was among the 210-odd who would now be allowed to run. The cases for those appealing will need to be resolved after the elections but before any winners take their seats, according to Medhat. GOI contacts affiliated with Iraqiyya, which claimed it had 67 candidates waiting for resolution of their appeals cases, expressed relief upon hearing the verdict, and eagerness to focus on upcoming campaign efforts. The announcement alleviated growing concerns that the Cassation Chamber judicial panel would not conclude its review of outstanding appeals ahead of IHEC's February 4 deadline for printing the official list of candidates, used on election day in conjunction with the ballot. END SUMMARY.

COURT RULING DEFLATES CONTROVERSY, BUT QUESTIONS LINGER

[¶2.](#) (C) The seven-judge Cassation Chamber issued its legal opinion today that orders IHEC to allow all candidates who have appealed their de-Ba'athification disqualifications to run in the upcoming elections. Supreme Court Judge Chief Medhat, who supervises the special panel, told A/DCM the evening of February 3 that the opinion covers all 210-odd candidates who have filed appeals with the Cassation Chamber, but does not cover candidates who did not appeal or who withdrew their appeals. The opinion was unanimous. A draft copy of the "template opinion" that the judge showed A/DCM carried the signature of all seven judges. A copy of it (signed only by the head judge) was submitted to IHEC for each disqualified candidate, with that candidate's name listed in the opinion, said Medhat. He also confirmed that Saleh al-Mutlaq was among the 210-odd who would now be allowed to run. The cases for those appealing will need to be resolved after the elections but before any winners take their seats, according to Medhat.

[¶3.](#) (C) Medhat made clear that the impact of the decision would be crystal clear for IHEC and there would be no questioning of its impact. These candidates' names would be restored immediately to the candidate list. IHEC and UNAMI contacts initially indicated that the electoral commission would comply with the legal ruling. However, as of 9:00 PM local, IHEC commissioners had not yet seen the judges' ruling, according to UNAMI sources at IHEC.

¶4. (C) Judge Medhat said the opinion (which Post is having translated) set forth two legal lines of argument: one questioned (without answering) the statutory authority of the Accountability and Justice Commission (AJC) to issue the disqualification decisions for the hundreds of candidates. It also questioned the evidentiary basis for the individual decisions. Judge Medhat said the AJC had failed to provide the judicial panel with evidence of Ba'athist affiliation to support the disqualifications decisions. He acknowledged that the AJC had made additional efforts to cooperate since the 20 cases for which it had provided limited material. But Medhat made clear the material provided had not been sufficient. He also noted that those filing the appeals had provided little or no evidence to refute the accusations of Ba'athist affiliation.

¶5. (C) Medhat said he understood there would be opposition to the decision and that he and the seven judges on the panel could face threats and possible violence. He welcomed A/DCM suggestion of mentioning to the Minister of Interior (whom he was to see later in the evening) the needed for beefed up security for the judges. Medhat acknowledged that similar threats would still have been faced if the decision had come out in the opposite way, depriving the candidates of their right to run.

¶6. (C) Judge Medhat said the decision was designed to avoid coming down in favor of either side, for now, until there is time to fully consider the legal issues. He described it as a "balanced, wise decision" that ensures enforcement of the Constitution but also protected the political and social rights of the individuals (including the right to be candidates) until the legal and evidentiary issues were

resolved. The ruling put much of the issue in the hands of Iraqi voters and would allow them to distinguish between good and bad candidates, said Medhat. In that way the decision was respectful of the will of the voters. Judge Medhat urged that any USG statement about the decision be even-handed, noting that it did not come down on one side or the other but respected the Iraqi Constitution and the social and political rights of Iraqi citizens. He said he was comfortable with a statement that told the truth.

IRAQIYYA REACTIONS TO RULING

¶7. (C) MP Jamal al-Batikh, an Iraqiyya bloc leader in the COR, spoke with Poloff on February 3, stating that Iraqiyya heard the announcement from IHEC earlier the same day. He was relieved and enthusiastic, speculating that President Talabani & finally got involved & was responsible for pushing the courts to make & a fair decision. Batikh noted that & this is over and we can start our campaigns. (COMMENT: Post understands that Talabani and Judge Medhat are high school classmates and remain close personal friends. Medhat earlier shared with A/DCM that he had been in "informal" communication with Talabani. END COMMENT.)